

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

JOHN DOE,

Plaintiff

v.

TRUSTEES OF DARTMOUTH COLLEGE,

Defendant

Civil Action No: 1:19-cv-00013-JL

**DEFENDANT’S ANSWER AND JURY DEMAND**

Defendant Trustees of Dartmouth College (“Dartmouth”) answers the correspondingly numbered paragraphs of the First Amended Complaint as follows:

**INTRODUCTION**

1. Dartmouth admits that it expelled Plaintiff John Doe in December 2018, after he was found responsible for sexual misconduct, and that this lawsuit concerns his expulsion. Otherwise denied.

2. Denied.

3. Dartmouth admits that in May 2018, Sally Smith made a complaint to Dartmouth that Doe had engaged in non-consensual sexual intercourse with her during a night they spent together and that Dartmouth opened an investigation into her complaint under its Unified Disciplinary Procedures for Sexual Assault. Otherwise denied.

4. Dartmouth admits that the investigator considered the issue of consent, among many others. Otherwise denied.

5. Dartmouth admits that it declined to consider the results of a polygraph test. Otherwise denied.

6. Denied.

7. Denied.

8. Dartmouth admits that it uses a single investigator model, which does not allow either party to directly confront or cross-examine the other. Otherwise denied.

9. Dartmouth admits that in November 2018, the Department of Education proposed new regulations, which, if adopted, would impose new requirements relative to the handling of sexual misconduct allegations. Otherwise denied.

10. Admitted.

11. Dartmouth admits that as a result of Doe's expulsion, he will not have the opportunity to obtain a Dartmouth degree. Otherwise denied.

12. Dartmouth admits that the Complaint makes these claims. Otherwise denied.

#### **JURISDICTION AND VENUE**

13. Dartmouth admits that the Complaint contains allegations that Dartmouth breached contractual obligations to Doe and that Dartmouth violated Title IX – the latter of which was dismissed. Otherwise denied.

14. Admitted.

15. Dartmouth admits that the Court has jurisdiction pursuant to 28 U.S.C. § 1332. Otherwise denied.

16. Admitted.

#### **PARTIES**

17. Dartmouth admits that Doe was a student at Dartmouth but otherwise lacks information sufficient to form a belief as to the truth of the allegations in this paragraph.

18. Dartmouth admits that it is a private, non-profit educational institution, which offers undergraduate liberal arts and graduate degree programs, receives federal funds, and is located in Hanover, New Hampshire. Otherwise denied.

## **FACTS**

### **John Doe's Academic and Athletic Background and Goals**

19. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations in this paragraph.

20. Admitted.

21. Admitted.

22. Admitted.

23. Dartmouth admits that Doe played on its hockey team; in accordance with his commitment agreement with Dartmouth, he took a year after high school to play junior hockey; and his success as a hockey player was a contributing factor to his admission at Dartmouth.

Dartmouth lacks information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

24. Denied, as Doe is no longer a student athlete at Dartmouth.

25. Denied, as Doe is no longer a student athlete at Dartmouth.

26. Denied, as Doe is no longer a student athlete at Dartmouth.

27. Denied, as Doe is no longer a student athlete at Dartmouth.

28. Denied, as Doe is no longer a student athlete at Dartmouth.

29. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations in this paragraph.

### **Plaintiff's Interactions with Sally Smith**

30. Denied.

31. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations in this paragraph.

32. Dartmouth admits that Doe and Smith engaged in sexual contact on two separate occasions before the incident at issue and that they were not in a dating relationship. Dartmouth lacks information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

33. Dartmouth admits that Doe was not taking classes during the Spring 2018 term and lacks information sufficient to form a belief as to the remaining allegations of this paragraph.

34. Admitted.

35. Dartmouth admits that on Tuesday, May 15, 2018, Doe and Smith exchanged text messages, in which they discussed the upcoming Green Key weekend and Doe anticipating that he would need a place to stay while he was on campus. Dartmouth lacks information sufficient to form a belief as to the remaining allegations of this paragraph.

36. Dartmouth admits that the text messages include the quoted language, along with other language which the Amended Complaint omits. Otherwise denied.

37. Dartmouth admits that Doe and Smith exchanged these text message and lacks information sufficient to form a belief as to the remaining allegations of this paragraph.

38. Dartmouth admits that Doe and Smith exchanged these text message and lacks information sufficient to form a belief as to the remaining allegations of this paragraph.

39. Admitted.

40. Admitted.

41. Admitted.

42. Dartmouth admits that Doe went to Smith's room, that they got onto Smith's bed, and that he engaged in various sexual touching of Smith as described in the investigator's report. Otherwise denied.

43. Dartmouth admits that Smith left her room and lacks information sufficient to form a belief as to the remaining allegations of this paragraph.

44. Dartmouth admits that Smith and Doe exchanged these text messages and lacks information sufficient to form a belief as to the remaining allegations of this paragraph.

45. Dartmouth admits that Doe returned to campus for the Summer 2018 term and lacks information sufficient to form a belief as to the remaining allegations of this paragraph.

#### **Sally Smith's Complaint to Dartmouth**

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. Dartmouth admits that Smith scheduled an appointment with Dartmouth's College Health Services for a sexual assault examination on Thursday, May 24, 2018, and did not keep the appointment. Otherwise denied.

51. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

52. Admitted.

53. Admitted.

#### **Dartmouth's Unified Disciplinary Process**

54. Admitted.

55. Dartmouth admits that an ongoing police investigation is one factor that can affect the timing of Dartmouth's investigation. Otherwise denied.

56. Admitted.

57. Admitted.

58. Admitted.

59. Admitted.

60. Admitted.

61. Admitted.

62. Admitted.

63. Admitted.

64. Admitted.

65. Admitted.

66. Admitted.

67. Admitted.

68. Dartmouth denies that the investigator has a “prosecution” function. Otherwise admitted.

**Dartmouth’s [Allegedly] Procedurally Deficient Investigation**

69. Admitted.

70. Dartmouth denies that the letter did not provide any detail about the specific allegation of nonconsensual sexual intercourse. Otherwise admitted.

71. Denied.

72. Denied.

73. Dartmouth admits that the investigator was selected from a pool of investigators that Dartmouth uses and that issues of scheduling and availability can affect the selection of an investigator for any particular case. Otherwise denied.

74. Admitted.

75. Dartmouth admits that before commencing her investigation in this case, the investigator had received training which included three trainings specifically regarding sexual assault or Title IX investigations. Otherwise denied.

76. Admitted.

77. Admitted.

78. Denied.

79. Dartmouth admits that in accordance with its Unified Procedures, the investigator is responsible for conducting an investigation and determining whether a student has violated Dartmouth's policies. Otherwise denied.

80. Dartmouth admits that the Title IX Coordinator, Kristi Clemens, issued a No Contact Order, which prohibited Doe from having any contact with Smith. Dartmouth lacks information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

81. Admitted.

82. Dartmouth admits that the investigator's usual practice is to seek all information that the investigator deems relevant, including from the complainant, the respondent, other witnesses, and the institution, and that depending on the case this information may or may not include swipe card information. Otherwise denied.

83. Admitted.

84. Admitted.

85. Admitted.

86. Admitted.

**The Investigator [Allegedly] Failed to Properly Consider  
That Sally Submitted Falsified Evidence**

87. Dartmouth admits that Smith agreed to provide to the investigator all of the text messages that she believed were relevant. Otherwise denied.

88. Dartmouth admits that Smith gave to the investigator some but not all of the text messages between her and Doe. Otherwise denied.

89. Admitted.

90. Dartmouth admits that Smith and Doe sent these text messages. Dartmouth lacks information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

91. Admitted.

92. Dartmouth admits that Smith gave to the investigator some but not all of the text messages between her and Doe. Otherwise denied.

93. Dartmouth admits that Smith did not give these two text messages to the investigator, although she told the investigator about them. Otherwise denied.

94. Denied.

95. Dartmouth admits that on November 28, 2018, Doe brought to the investigator's attention the fact that Smith had not provided all of the text messages between Smith and Doe, and that the investigator's response the next day includes the quoted language. Otherwise denied.

96. Dartmouth admits that the investigator received the complete set of text messages from Doe after Smith had provided some but not all of the text messages, and that the investigator determined there was no need for her to conduct any further investigation about the text messages. Otherwise denied.



97. Dartmouth admits that Smith was not disciplined “for providing falsified evidence to the Investigator” because there was no such finding. Otherwise denied.

98. Dartmouth denies that Smith submitted evidence which was “doctored” or “manipulated,” denies that the investigator failed to consider the accuracy of the evidence Smith submitted, and denies any remaining allegations of this paragraph.

**Dartmouth Refuses to Allow the Investigator to Consider  
the Results of John’s Polygraph Examination**

99. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

100. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

101. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

102. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

103. Denied.

104. Admitted.

105. Dartmouth admits that during the second interview with Doe, she directed Doe and his attorney to contact the Office of the General Counsel at Dartmouth about whether the polygraph evidence could be considered and, if so, what weight, if any, it might be given. Otherwise denied.

106. Denied.

107. Admitted.

108. Admitted.

109. Dartmouth admits that Doe offered to Mr. Consigli and Mr. Webb available for interview by the investigator, but the offer was declined because Dartmouth does not consider polygraph evidence in student conduct cases. Otherwise denied.

110. Admitted.

111. Admitted.

112. Dartmouth admits that the Procedures contain the quoted language; the Procedures do not contain language about polygraph evidence; and Dartmouth did not deliver information about polygraph evidence to Doe along with notice of the charge against him, at which time no issue about polygraph evidence had been raised. Otherwise denied.

**Dartmouth Refuses to Delay Investigation Pending Results of Hanover PD Forensic Testing**

113. Admitted.

114. Admitted.

115. Admitted.

116. Admitted.

117. Admitted.

118. Admitted.

119. Admitted.

120. Admitted.

121. Admitted.

122. Admitted.

123. Denied.

124. Admitted.

125. Admitted.

126. Admitted that Doe never was “given” such an opportunity because he never requested one. Otherwise denied.

127. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

**The Investigator Failed to Conduct Any Follow-Up Investigation of  
the [Alleged] Inconsistencies in Sally’s Account**

128. Admitted.

129. Denied that the preliminary findings in the report were final. Otherwise admitted.

130. Denied.

131. Admitted that on October 8, 2018, Doe submitted a 10-page response to the Preliminary Report, in which he made the assertions alleged in the Complaint.

132. Admitted.

133. Admitted that Doe identified a proposed new witness and suggested further questioning of a witness and of Smith. Otherwise denied.

134. Dartmouth denies Doe’s characterization of the alleged questions as “obvious”; otherwise admitted.

135. Dartmouth admits that the primary dispute in the case was whether sexual intercourse occurred. Otherwise denied.

136. Dartmouth admits that Smith reported having washed her sheets, as a result of which the sheets did not provide forensic evidence which could have been relevant to the determination whether sexual intercourse occurred. Otherwise denied.

137. Dartmouth admits that the investigator credited Smith’s explanation as to why she decided not to keep her appointment for the invasive SANE exam, which was supported by corroborating evidence. Otherwise denied.

138. Dartmouth admits that the investigator considered a photo of a Plan B package among other evidence which corroborated Smith's account of obtaining and taking this emergency contraception; the photo was not time- or date-stamped; and the investigator did not request card swipe records. Otherwise denied.

### **The Final Report**

139. Admitted.

140. Dartmouth denies that Doe was not afforded the opportunity to present evidence and witnesses. Otherwise admitted.

141. Dartmouth admits that the report contains the quoted language. Otherwise denied.

142. Admitted.

143. Dartmouth admits that the Final Report did not indicate that the investigator credited Doe's evidence or witnesses on all issues; that the investigator conducted any of the additional investigation or questioning that Doe suggested; or that the investigator discredited Smith's text messages or other statements. Otherwise denied.

144. Dartmouth admits that the text messages are appended to the Final Report. Otherwise denied.

145. Admitted.

### **The Sanctioning Process**

146. Admitted.

147. Dartmouth admits that on December 4, 2018, Doe submitted a sanctioning statement to the Office of Judicial Affairs to be forwarded to the panel that would determine his sanction, which statement speaks for itself. Otherwise denied.

148. Denied.

149. Dartmouth admits that Smith's sanctioning statement includes the quoted language and lacks information sufficient to form a belief as to the truth of the allegations that Smith "claimed" and "editorialized." Otherwise denied.

150. Dartmouth admits that the text messages contain the quoted language and lacks information sufficient to form a belief as to Doe's characterization of what Smith or Doe meant. Otherwise denied.

151. Dartmouth admits that the text messages contain the quoted language and lacks information sufficient to form a belief as to Doe's characterization of what Smith or Doe meant. Otherwise denied.

152. Dartmouth admits that the text messages contain the quoted language and that other text messages were not included. Dartmouth lacks information sufficient to form a belief as to Doe's characterization of what Smith or Doe meant or understood. Otherwise denied.

153. Admitted.

154. Dartmouth admits that on December 10, 2018, after being given the opportunity to submit a further sanctioning statement, Doe submitted one which contained the quoted language and which speaks for itself. Otherwise denied.

155. Admitted.

156. Admitted.

157. Admitted.

158. Admitted.

159. Dartmouth admits that during the course of the investigation, Doe remained on campus and Dartmouth did not believe that he was a danger to the community, an assessment

which changed after it was determined that he sexually assaulted Smith. Dartmouth otherwise lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

### **The Appeal**

160. Dartmouth admits that on December 19, 2018, Doe filed his appeal in which he made the claims alleged in the Complaint. Otherwise denied.

161. Dartmouth admits that Doe asserted these concerns. Otherwise denied.

162. Admitted.

163. Dartmouth admits that Smith provided text messages to the investigator before Doe did. Otherwise denied.

164. Denied.

### **[Alleged] Pressure on Dartmouth to Respond Harshly to Allegations of Violence Against Women**

165. Dartmouth admits that at various times before, during, and since the conduct proceedings involving Doe, some in the Dartmouth community have focused significant attention on issues of violence against women and sexual misconduct. Otherwise denied.

166. Admitted.

167. Dartmouth admits that the 2011 Dear Colleague Letter included requirements and suggestions relative to the prevention and investigation of sexual violence by educational institutions that receive federal funding and stated, “When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department ... .” Otherwise denied.

168. Dartmouth admits that the Dear Colleague Letter contains the language quoted from page 4 of the Letter and that footnote 1 on page 2 of the Letter says the term “sexual harassment” includes “sexual violence.” Otherwise denied.

169. Dartmouth admits that the Dear Colleague Letter contains the quoted language, which relates in part to concurrent law enforcement investigations. Otherwise denied.

170. Admitted.

171. Admitted.

172. Admitted.

173. Dartmouth admits that in connection with the Department’s withdrawal of the 2011 and 2014 guidance documents, the Department cited concerns expressed by certain commentators and the fact that the earlier guidance did not involve a formal public notice and comment process. Otherwise denied.

174. Dartmouth admits that the Department used the quoted language and citations. Otherwise denied.

175. Admitted.

176. Dartmouth admits that the 2017 Q&A guidance says, “The standard of evidence for evaluating a claim of sexual misconduct should be consistent with the standard the school applies in other student misconduct cases,” which is the case at Dartmouth. Dartmouth lacks information sufficient to form a belief as to the truth of what “many schools” may be required to do in light of the 2017 Q&A. Otherwise denied.

177. Dartmouth admits that the 2017 Q&A guidance says, “If a school chooses to allow appeals from its decisions regarding responsibility and/or disciplinary sanctions, the school may choose to allow appeal (i) solely by the responding party; or (ii) by both parties, in which

case any appeal procedures must be equally available to both parties,” as is the case at Dartmouth. Otherwise denied.

178. Dartmouth admits that the Department issued proposed regulations relative to Title IX on November 16, 2018, which were published in the Federal Register on November 29, 2018; these proposed regulations followed the Department’s withdrawal of the 2011 Dear Colleague Letter; and the Department stated that it examined how schools were conducting sexual assault investigations and proceedings, which included discussions with various stakeholders. Otherwise denied.

179. Admitted.

180. Dartmouth admits that as part of its examination of how recipients handle complaints of sexual misconduct, the Department reviewed the cited criticism of prior guidance. Otherwise denied.

181. Dartmouth admits that the Department cited these criticisms of some practices that purportedly exist at some schools, without citing directly the practices of any school, including Dartmouth. Otherwise denied.

182. Dartmouth admits that the proposed regulations include those set forth in proposed 34 CFR § 106.45(b). Otherwise denied.

183. Dartmouth admits that over the years one or more individuals have been critical of Dartmouth’s handling of sexual assault allegations. Otherwise denied.

184. Dartmouth admits that it has conducted various programs relative to addressing concerns about sexual misconduct on campus. Otherwise denied.

185. Admitted.



186. Dartmouth admits that the article includes the quoted language. Otherwise denied.

187. Denied.

188. Admitted.

189. Admitted.

190. Admitted.

191. Dartmouth admits that Professor Lively's research and teaching interests involve the nexus of identity, emotion, and culture, and that she teaches introductory courses in sociological social psychology, emotion, and culture. Otherwise denied.

192. Admitted.

193. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

194. Dartmouth admits that in February 2017, members of the Dartmouth community participated in a month-long initiative to educate the community about issues related to gender and sexuality, including but not limited to violence against women, and that the initiative included but was not limited to student performances. Otherwise denied.

195. Admitted.

196. Dartmouth admits that in May 2017, The Dartmouth reported incidents of threats of violence against women. Dartmouth lacks information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

197. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

198. Dartmouth admits that on May 30, 2017, in connection with a series of incidents on campus, President Hanlon sent an email to the campus community which included the quoted language. Otherwise denied.

199. Dartmouth admits that in June 2017, The Dartmouth published an article concerning the Class of 2017 Senior Survey, which contained the quoted language. Otherwise denied.

200. Dartmouth admits that in May 2018, after Green Key weekend, The Dartmouth published a number of pieces in which students discussed, among other things, the prevalence of sexual assault, what constitutes effective consent to engage in sexual activity, and false reports of sexual assault. Otherwise denied.

201. Dartmouth admits that in June 2018, The Dartmouth published an article concerning the Class of 2018 Senior Survey. Otherwise denied.

202. Dartmouth admits that in August 2018, The Dartmouth published an article concerning a student demonstration in which participants reportedly chanted “rapists are not welcome here” and expressed solidarity with survivors of sexual violence, and that one student reportedly stressed the necessity of supporting survivors and holding offenders accountable and said she was tired of the fact that the fear of being accused of sexual assault has sometimes been taken more seriously than the actual victims of sexual assault. Otherwise denied.

203. Dartmouth admits that in September 2018, the Dartmouth published an article entitled “A retrospective on discussions surrounding sexual assault,” which contained the quoted language. Otherwise denied.

204. Admitted.

205. Admitted.

206. Admitted.

207. Dartmouth admits that the article reported that Ms. Clemens found reassurance of the College's progress in addressing sexual misconduct in the fact that Dartmouth was seeing an increase in the number of reports of such misconduct and that the article contains the quoted language. Otherwise denied.

208. Dartmouth admits that on September 28, 2018, in the midst of U.S. Senate hearings regarding the Supreme Court nomination of Justice Brett Kavanaugh, the leadership of Dartmouth's Student Assembly sent an email to the campus, which had the subject line "Dr. Ford: We believe you," and which included the quoted language. Otherwise denied.

209. Admitted.

210. Dartmouth admits that on December 3, 2018, The Dartmouth published an article entitled "Alumni question donating after sexual harassment lawsuit," which reported that a number of alumni had suspended making donations to the College as a result of the allegations in the lawsuit and that one donor was organizing an open letter to be circulated among alumni and released in January. Otherwise denied.

211. Dartmouth admits that on December 10, 2018, The Dartmouth published an article entitled "Lawsuit puts spotlight on College's practices concerning sexual assault survivors, which includes the quoted language. Otherwise denied.

212. Admitted.

213. Dartmouth admits that on December 17, 2018, The Dartmouth published an article which describes a "letter in support of sexual harassment plaintiffs," which reportedly was from a group calling itself Dartmouth Community Against Gender Harassment and Sexual Violence, was signed by nearly 800 members of the Dartmouth community, was presented to

President Hanlon and the Board on December 6, 2018, was presented during the time Doe's case was pending, and speaks for itself. Dartmouth admits that on December 12, 2018, President Hanlon sent an email to the campus community, which contains the quoted language. Otherwise denied.

214. Admitted.

215. Admitted.

216. Denied.

**[Alleged] Consequences of Dartmouth's Decision**

217. Denied.

218. Dartmouth admits that Doe's expulsion will significantly affect Doe's undergraduate career in the sense that he will not be able to graduate from Dartmouth.

Dartmouth lacks information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

219. Dartmouth denies that Doe's Dartmouth transcript contains any notation that he was separated from Dartmouth for disciplinary reasons. Dartmouth admits that The Common Application requires a transfer applicant to indicate whether the applicant was disciplined by the school from which the applicant seeks to transfer; an affirmative answer requires the applicant to provide a written explanation; and the College Report, which is a supplement to The Common Application, requests information directly from the institution regarding the applicant's disciplinary record and a recommendation regarding admission of the applicant. Dartmouth lacks information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

220. Admitted.

221. Admitted.

222. Dartmouth admits that Doe played in nine games for the Dartmouth hockey team during the 2018-2019 season; he would not be eligible to play for another Division 1 team that season; he will lose that year of eligibility; and he will be required to sit out one season in the event he transfers to another Division 1 program. Dartmouth lacks information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

223. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

224. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

225. Dartmouth admits that Doe's expulsion interrupted his opportunity to play college hockey and otherwise lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

226. Denied.

227. Denied.

228. Denied.

## **CAUSES OF ACTION**

### **I. Title IX**

229-39. No response is required, as Count I has been dismissed. If and to the extent a response is deemed to be required, any allegations in these paragraphs about the motives or actions of Dartmouth and its investigator are denied.

### **II. Breach of Contract**

240. Dartmouth incorporates by reference its responses above.

241. Denied.

242. Admitted.

243. Denied.

244. Denied.

245. Denied.

246. Denied.

### **III. Breach of Covenant of Good Faith and Fair Dealing**

247. Dartmouth incorporates by reference its responses above.

248. Dartmouth lacks information sufficient to form a belief as to the truth of the allegations of this paragraph.

249. Denied.

250. Denied.

### **AFFIRMATIVE DEFENSES**

1. Doe's Title IX claim fails for all the reasons stated in Dartmouth's motion to dismiss and the Court's ruling allowing that motion with respect to the Title IX claim, which are incorporated by reference.

2. Doe's contract claims are barred by his own breach of contract.

3. Doe's contract claims are barred because he cannot show that Dartmouth breached any contract with him.

4. Doe's contract claims are barred because he cannot show that any alleged breach of contract resulted in damages to him.

5. Doe has waived his right to enforce any contractual obligations.

6. Doe's recovery, if any, is limited or barred by his failure to take steps to mitigate his alleged harm.

WHEREFORE, Dartmouth respectfully requests that:

- a. the Complaint be dismissed with prejudice;
- b. Dartmouth be awarded its costs, including attorneys' fees; and
- c. Dartmouth be granted such other relief as is just and proper.

**JURY DEMAND**

Dartmouth demands a trial by jury on all claims so triable.

TRUSTEES OF DARTMOUTH COLLEGE,

/s/ Katherine A. Guarino

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April 30, 2019

**Certificate of Service**

I certify that on April 30, 2019, a true copy of this document was served upon the following attorneys of record by filing with the ECF system:

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/s/ Katherine A. Guarino

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